

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:)

CASE No. 2011-123

Singletary Tax Services)

Materials Management Office)

RFP No. 5400002768)

Accounting for First Steps Program)

POSTING DATE: July 15, 2011

MAILING DATE: July 15, 2011

This matter is before the Chief Procurement Officer (“CPO”) pursuant to a letter of protest from Singletary Tax Services (“Singletary Tax”) filed June 7, 2011 under the provision of Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code (“Code”). With this request for proposals (“RFP”), the Materials Management Office (“MMO”), on behalf of the South Carolina Department of Education (“Department”), seeks to procure accounting services for First Steps County Partnerships. [Exhibit 1 - RFP; Exhibit 2 - Amendment One; Exhibit 3 - Amendment Two; Exhibit 4 – Extension of Award Posting #1; Exhibit 5 – Extension of Award Posting #2] On May 31, 2011, MMO posted an Intent to Award Region One to Cherry Bekaert & Holland LLP (“Cherry”) and Region Two to Elliott Davis LLC (“Elliott”). [Exhibit 6 - Intent to Award] Singletary Tax filed a protest challenging the Intent to Award. Upon receipt of the protest, MMO suspended the intended awards. [Exhibit 7 – Suspension Notices] MMO and Elliott subsequently filed responses. (See attached.)

Based on the official procurement file and the applicable law, the CPO has conducted an administrative review pursuant to Section 11-35-4210(4) of the Code and issues this Decision without a hearing.

NATURE OF PROTEST

Singletary Tax’s letter of protest is attached and incorporated herein by reference.

CONCLUSIONS OF LAW

1. Allegation of “numerous flagrant violations in the award process”

a. Singletary Tax first alleges that the State violated Sections 11-35-1520(2) and 11-35-2030(4) of the Code by allegedly awarding Elliott a contract through “12-31-9999” (Contract Number 4400003807) (Protest Letter #2). Section 11-35-1520 reads as follows:

(2) Invitation for Bids. An invitation for bids must be issued in an efficient and economical manner and must include specifications and all contractual terms and conditions applicable to the procurement.

Section 11-35-2030 reads:

(4) The maximum time for a multi-term contract is five years. Contract terms of up to seven years may be approved by the designated board officer. Contracts exceeding seven years must be approved by the board.

This solicitation, which was an RFP pursuant to Section 11-35-1530 of the Code, provided in relevant part:

MAXIMUM CONTRACT PERIOD – ESTIMATED (JAN 2006)
Start date: **07/01/2011** End Date: 06/30/2016... (Ex. 1, p. 6, Emphasis added)

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)
The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is **one (1) years** from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. (Ex. 1, p. 35, Emphasis added)

The current Intent to Award in this matter, which generally becomes the final statement of award unless canceled or suspended, was posted on May 31, 2011, and reflects that Elliott was the intended awardee of a contract with a maximum contract period “through June 30, 2016”

2016” only. (Ex. 6).¹ Therefore, the official contract documents reflect that the maximum contract period was five years. Accordingly, there is no evidence that Elliott was in fact awarded a contract until the year 9999 in violation of the above law, and this protest issue is denied.

b. Singletary Tax also alleges that the State violated Sections 11-35-1520(5) and 11-35-1520(11)(b) of the Code by failing to properly conduct a bid opening on June 23 and 31, 2011 as required (Protest Letter #1 and #4). Section 11-35-1520(5) reads:

(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by the regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time.

However, as stated above, this was an RFP, rather than an Invitation for Bids (“IFB”). Section 11-35-1530 provides in relevant part:

(1)...[A] contract may be entered into by competitive sealed proposals subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided in this section. (Emphasis added)

(3) Receipt of Proposals. Proposals must be opened publicly in accordance with regulations of the board. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award. (Emphasis added)

Regulation 19-445.2095(C) further provides in relevant part:

For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals...After the date

¹ Moreover, the Suspension Notice dated June 10, 2011 also reflects a maximum contract date of June 30, 2016. (Ex. 7).

date established for receipt of the proposals, a Register of Proposals shall be prepared which shall include for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered...The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier...Contents and the identify of competing offers shall not be disclosed during the process of opening by state personnel. (Emphasis added)

In its protest letter, Singletary Tax first contends that the State violated the law because “[a] public bid opening was refused on 6/23/2011...and 6/31/2011.” The original RFP provided an opening date and time of May 9, 2011 at 2:30 PM. (Ex. 1) Amendment One modified the opening date and time to May 17, 2011 at 2:30 PM. (Ex. 2) Since the opening date was May 17 and the offers were opened on that date, the State was not required to hold a bid or offer opening on either June 23 or 31. Moreover, the procurement officer issued Extensions of Award Postings on May 11 and 23, 2011 as authorized by Regulation 19-445.2090(B). (Ex. 4 and 5) There is no violation of the above law in this regard.

Singletary Tax also contends that the State violated the requirement that bids be tabulated at bid opening and the tabulation be open to public inspection at that time. However, as the law above reflects, Section 11-35-1520(5) does not apply to RFPs; instead, Section 11-35-1530(3) is the provision applicable to this procurement. Pursuant to this Section and Regulation 19-445.2095(C), the State was actually required **not** to disclose information regarding the contents and identity of competing offers at the opening. Therefore, Singletary Tax failed to prove any violation of the above law in this regard.

Singletary Tax also alleges that the State violated the provisions of Section 11-35-1520(11)(b) of the Code, which requires the State to determine the rank of prospective bidders when a Request for Qualifications (“RFQ”) is conducted. As stated previously, this was an RFP

RFP pursuant to Section 11-35-1530, not a RFQ pursuant to Section 11-35-1520(11). Therefore, Section 11-35-1520(11)(b), which establishes procedural requirements for RFQs, is inapplicable to this procurement, and, accordingly, none of the above law was violated in this regard.

Accordingly, there is no evidence that the State violated Section 11-35-1520(5) or 11-35-1520(11)(b) of the Code and inappropriately conducted an opening. Since there was no violation of these laws, this protest issue is denied.

2. Allegation that bids or awards were permitted to be corrected or canceled

Singletary Tax alleges that the State violated Section 11-35-1520(7), which reads in part:

After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted...Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency. (Emphasis added) (Protest Letter #2, Emphasis added)

Specifically, Singletary Tax claims that the State either allowed vendors to “correct” their bids in violation of this statute or awarded Region II to two vendors rather than one, which was contrary to the solicitation terms, and then canceled the award or contract without the appropriate determination and reawarded that region to one vendor.

As a preliminary matter, there is no evidence that offers were corrected after opening. Further, the Intent to Award clearly reflects that Cherry Bekaert & Holland LLP was the intended awardee of Region I and Elliott was the only intended awardee of Region II. (Ex. 6) The Intent to Award, not a computer screen summary, is the official contract document. Therefore, there is no probative evidence that two bidders were ever awarded Region II or that any intended award was canceled in violation of Section 11-35-1520(7). Moreover, an Intent to Award, rather than an award, was issued, so no award or

or contract yet exists based on the language of Section 11-35-1520(10) of the Code. Accordingly, there is no evidence that the State violated Section 11-35-1520(7), and this protest allegation is denied.

3. Allegation that the State failed to post required notices

Singletary Tax alleges that the State violated Section 11-35-1520(10) of the Code by failing to post the notice of the intended awards and a statement of the right to protest. (Protest Letter #3) This allegation is without merit.

Section 11-35-1520(10) provides in relevant part:

For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract...the posting date shall appear on the face of all these notices...The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest.

Pursuant to Section 11-35-1530(9), "the procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11-35-1520(10).

The evidence reflects that Intent to Award was posted on May 31, 2011 as the Extension of Award Posting #2 had provided and was in compliance with the Code. (Ex. 5 and 6). Moreover, the RFP contained a provision regarding protests (See Ex. 1, p. 10); the Intent to Award also included the required statement regarding the right to protest. (See Ex. 6.) Therefore, there is no evidence that the requirements in Section 11-35-1520(10) were violated. Even if this statute had been violated in some regard, it would be, at most, harmless error since the protest letter filed on June 7 was timely. Accordingly, this allegation is also denied.

4. Allegation of "bid rigging"

In its protest letter, Singletary Tax states that "big rigging" occurred. (Protest Letter, pp. 2 and 6) To the extent that Singletary Tax raises an issue of "bid rigging," this allegation is too vague to adequately state a claim. Therefore, it is dismissed.

5. Allegation regarding violations of federal antitrust laws

Singletary Tax also alleged that “several Federal Anti-Trust Laws have been grossly violated.” (Protest Letter #5, #7-13). However, the CPO does not have jurisdiction or the authority over allegations involving federal antitrust violations. See Matter of Hutchinson Contracting Co., Inc., Comp. Gen. Nov. B-241742 (1990)(noting it does not consider allegations of antitrust violations) Accordingly, these allegations are dismissed due to lack of jurisdiction.

Moreover, to the extent that Singletary Tax has also raised a protest issue regarding unfair trade practices in violation of South Carolina law (Protest Letter, p. 2 and 5), it is not a valid claim for protests. Unisys Corporation v. SC Budget and Control Board, Opinion 25342, Richland County Circuit Court (2001)(holding that claims regarding unfair trade practices are not viable in protest proceedings since transactions under the Procurement Code are exempt from the South Carolina Unfair Trade Practices Act). Therefore, this issue, if raised, is dismissed for failure to state a claim.

6. Allegation regarding FOIA violations

Singletary Tax also claimed that the State failed to comply with the requirements of the Freedom of Information Act (“FOIA”) (Protest Letter, #6). The CPO has no jurisdiction or authority over allegations that the FOIA was violated. See Protest of Transportation Management Services, Inc., Panel Case No. 2000-2 (dismissing an allegation involving a FOIA response for failure to state a claim); see also, Matter of LNM Corp., April B-247669 (1992)(finding that challenges to the handling of a FOIA request are not within its bid protest jurisdiction). Therefore, this protest issue is dismissed.²

DETERMINATION

² However, the CPO notes that FOIA gives the State 15 business days to respond to FOIA requests. S.C. Code of Laws, Section 30-4-30(c). The procurement regulations require the procurement officer to respond to a FOIA request with 10 calendar days, which is sooner than FOIA requires. Regulation 19-445.2010(A). Regardless, the response from MMO reflects that it responded to the FOIA request well within the timeframe required pursuant to the regulation.

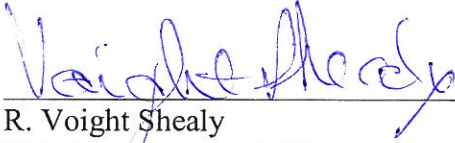
The protest issues are dismissed for the reasons set forth above. To the extent that the protest letter raised additional issues not addressed above, the CPO dismisses them as well since they were too vague to adequately state a claim.

Finally, Singletary Tax submitted the attached email to the CPO and the parties on June 28, 2011. (See email without attachments.) In that email, Singletary Tax attempts to amend its protest letter to raise an allegation that the evaluators acted clearly erroneously, arbitrarily, capriciously, or contrary to law in their scoring of the proposals, which was not raised in its June 7 protest letter. However, this additional allegation was submitted outside the time limits provided in Section 11-35-4210(2)(b), which reads as follows:

At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b).
(Emphasis added)

As stated previously, the Intent to Award was issued on May 31, 2011. Therefore, any amended protest was due by June 15, 2011. Since no amended protest letter was filed by the deadline, this issue is untimely and the CPO lacks the authority to rule on it. Accordingly, any allegation regarding evaluators' scoring is dismissed.

For all the aforementioned reasons, this protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

July 15, 2011
Columbia, SC.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

T 843-763-9262
843-763-9595

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June 7, 2011
Not listed in RFP
Chief Procurement Officer
Materials Management Office
1201 Main Street
Columbia, SC 29201

Re: First Steps of South Carolina

Bid Protest-- First Step Program / SC Department of Education Administration

Dear Chief Procurement Officer:

This is a formal protest regarding Solicitation # 540002768, issue date 04/07/2011, Procurement officer Daniel W. Covey. I hereby protest the intent to award the contract for Accounting for First Steps Program Program under SC Department of Education Administration and request a hearing and administrative review. Materials Management Office ("MMO") originally posted and intent to award on June 31, 2011. Singletary Tax Services as a bidder in this procurement and, pursuant to S.C. Code Ann. § 11-35-4210(1), has standing to pursue a protest. Singletary Tax Services submitted FOIA requested to Daniel Covey for further information through the FOIA process in order to supply additional facts to substantiate its position, the FOIA request to date have not been answered as promised. Again, critical information regarding fair competition, non-bias evaluations, question surrounding bid security, illegal information sharing, bid changing and the like is predicated in part on the requested FOIA information and each metadata file requested. The protest is based upon the following factual and legal basis:

Singletay Tax Services protest the notice of intent to award the subject contract to Cherry Bekaert & Holland LLP and Elliott Davis LLC because of the following reasons that could not have been raised pursuant 11-35-1410(1)(a):

1. numerous flagrant process violations in the award process. First section 11-35-1530 is subject to the provisions of Section 11-35-1520. Section 11-35-1520 (2) stipulates that contractual terms must be included. The contract intended to be awarded to contract number 4400003807 gives a term through 12-31-9999 which is in direct violation of section 11-35-1520(2) and Multi-term contracts section 11-35-2030(4) . 4) The maximum time for a multi-term contract is five years. Contract terms of up to seven years may be approved by the designated board officer. Contracts exceeding seven years must be approved by the board. No board prior approval has been given. Even more critical the violation of 11-35-1520(5) which provides a crystal clear directive for Bid Openings. The provision states verbatim that “Bids must be opened publicly in the presence of one or more witness, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time”. In this case the protestor request the time and designates location on several occasions resulting in travel to 1201 Main St. 6th floor from Charleston SC on two separate occasions for the public bid opening as mandated by South Carolina Statutory Law. A public bid opening was refused on 6/23/2011 (late unexplained postponement) and 6/31/2011(no explanation for restricted behind the curtain , close door to the public decision). These actions of collusion shake the faith of the public confidence in South Carolin’s bid process and give rise to public anti-trust of South Carolina’s rules of reasoning and formulates a cloud of pernicious effects on Laissez-faire competition leaving behind premonitions of agreements in which on party of a group of bidders will be designated to win the bid commonly known as bid rigging a deliberate bad faith, intentional, calculated, and maliciously fraudulent action. Singletary’s Tax Services

bid was the lowest responsible best value bid, and contrary to the RFP the award was given to another bidder. Incidents like this and other suspicious statements and behavior has drawn attention to many collusion indicators connected with solicitation 540002768.

2. Initially, the behind the curtain public restricted bid contract gave Regions 2 (the same region) to the same bidders of which Singletary's Tax Services's bid was lower than at least one of the competitors yet Singletary Tax Services was not named. Singletary's Tax Services a domestic entity (juxtapose to at least one of the named bid competitors who is a foreign entity) in fact is the longest running Regional Financial Manager having placed the very first South Carolina First Steps County into operation. This award error was brought to the attention of the Procurement Officer by Singletary Tax Services through Russell Brown of First Steps after said Procurement Officer failed to return several Calls from Singletary Tax Services regarding the matter. Section 11-35-1520(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reward of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency. Without doubt the changes were prejudicial to the interest of the State and fair competition and they must not be permitted by state law.
3. The award of the contract based upon South Carolin own code 11-35-1520 pronounces that "(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice

of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids. For contracts with a total or potential value in excess of fifty thousand dollars but less than one hundred thousand dollars, notice of the award of a contract must be given by posting and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. Before the posting of the award, the procuring agency may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to Section 11-35-4210(1). When only one response is received, the notice of intent to award and the delay of award may be waived." This sections requires and makes it mandatory that all awards For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. This section also stipulate that The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to Section 11-35-4210(1). Clearly these essential, binding and requisite actions have been violated.

4. Section 11-35-1520(11)(b) After receipt of the responses to the request for qualifications from prospective bidders, the rank of the prospective bidders must be determined in writing from most qualified to least qualified on the basis of the information provided. Bids

then must be solicited from at least the top two prospective bidders by means of an invitation for bids. The determination regarding how many bids to solicit is not subject to review under Article 17. As a result of the behind the curtain process used Singletary Tax Services was violated and barred from the ranking information and the statutory right to public inspection at that time, any tabulations, and names of each bidder as is mandatory according to 11-35-1520(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time. this is an unquestionable and unconscionable violation of public trust and state binding and compulsory law.

5. In accordance with 11-35-2420 Singletary Tax Services hereby reports anticompetitive practices in connection with SC State Solicitation 5400002768 and submits this protests as information alleging anticompetitive practices among bidders, offerors, and brings it to the attention of each protest reading state employee, and request that immediate notice for all relevant facts shall be transmitted to the Attorney General by the Chief Procurement Officer (CPO).
6. In accordance with 11-35-4210 the initial grievence communication with the Procurement Officer(PO) was discussed after Singletary Tax Services written communication on 6/3/2011 to PO was received at which time Singletary Tax Services was routed to the FOIA process with assurance that requested information would be received within 2 to 3 days. Upon reliance on that information from the PO Singletary Tax Services postponed the immediate protest of solicitation 5400002768. Critical information regarding the protest that was restricted from analysis due to the restricted illegal public closed bid process has not been shared as promised and as mandated by law.

7. In addition to the State regulations Singletary Tax Services submits that several Federal Antitrust Laws have been grossly violated. The Sherman anti-trust law
8. Clayton Antitrust Act
9. Federal Trade Commission Act of 1914 title 15
10. Robinson-Patman Act of 1936
11. Interstate commerce Act of 1887
12. 28 U.S.C. 1983
13. 42 U.S.C. 2000e

Many of the flagrant and egregious actions already committed in this secrete public restrictive evaluation process are contrary to Department of Justice and Federal Trade Commission Antitrust Guidelines. Singletary Tax Services contends that the determination that the intent to award contract 440000386 and 440000387 to Cherry Bekaert & Holland LLP and Elliott Davis LLC was based upon fraudulent and illegal actions, incorrect information, arbitrary, capricious, incomplete information, mistakes, flagrant disregards for Procurement Code Title 11 Section 35, and a manifest disregard of the law all of which amounts to bid rigging.

Wherefore protestor request pursuant 11-35-4210(7) the automatic Stay of Procurement During Protests be evoked until a final resolution has been determined. Pursuant 11-35-4310 if sustained Singletary Tax Services request all entitlement cost. Singletary Tax Services request pursuant 11-35-4410 , 11-35-4220 and 11-35-4230 a five member Administrative Review Panel appointed by the Governor. Upon review and analysis of the aforementioned reasons coupled with an investigation that the final bids submitted on 6/19/2011 were in fact tampered with prior to the evaluation tabulation Singletary Tax Services also request that the Final bid submitted by Singletary Tax Services for the 46 counties be viewed in light of if in fact it would have won the final award. Singletary Tax Services has performed professionally, diligently and competently as the states oldest

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RFM for better than 16 consecutive years and request the annual submitted contract amount for the 46 counties for the same equivalent 16 years as damages along with treble damages and the bidding process redone and awarded to the lowest responsive responsible bidder taking into consideration appropriate debarments per 11-35-4220.

Singletary Tax Services will rely on these arguments and such additional information as may become available through the course of our Freedom of Information Act request and further investigation. We also request a "Litigation Hold Notification" be sent to all employees, departments, IT Departments heads and bidders who submitted bids for solicitation 540002768 regarding all relevant data that may be discoverable facts relating to this protest of solicitation 5400002768. We reserve the right to all additional constitutional remedies and we look forward to the administrative review and hearing of this protest and presenting our proof.

Sincerely yours,

John Singletary

John Singletary

843-693-2823 or 843-763-9262

johnsing@knology.net

632 Dupont Rd.

Charleston, SC 29407

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June 14, 2011

R. Voight Shealy, CPM
Chief Procurement Officer for Supplies and Services
Materials Management Office
1201 Main St., Suite 600
Columbia, SC 29201

Re: Protest of John Singletary – Solicitation 5400002768

Dear Mr. Shealy,

Per your request via email dated June 9, 2011, please find attached a timeline for the referenced procurement and a response to the protest allegations found in Mr. Singletary's letter dated June 7, 2011.

The inputs in the timeline and response were provided by the Procurement Manager responsible for this solicitation, Mr. Daniel Covey.

Sincerely,

John R. Stevens, CPPB, CPM
State Procurement Officer

Cc (email): Laurie V. Smith, CPA, of Elliott Davis,
Allan Robinson, Partner, of Cherry, B & H
Daniel Covey, Department of Employment & Workforce

Procurement Time Line

1. RFP published on 04/07/2011
2. Pre-bid meeting via "Go to Meeting" on 4/21/2011 (protestant was present)
3. Questions due by 4/22/2011
4. Original Opening Date: 5/05/2011
5. Original Award Date: 5/11/2011
6. Amendment 1 issued (5/04/2011) changed opening date to 5/17/2011 (needed more time to answer questions).
7. Amendment 2 issued (5/06/2011) question and answers
8. Extension of Award #1 posted 5/11/2011 changing award posting date to 05/23/2011
9. Bid opened 5/17/2011
10. Extension of Award #2 posted 5/23/2011 changing award date to 05/31/2011
11. Award posted 05/31/2011
12. Received FOIA request from Mr. John Singletary of Singletary Tax Services (protestant) 06/03/2011
13. Requested documents emailed to the protestant on Tuesday, June 7, at 3:58 PM (as of close of business on Friday June 10th, the email had not been opened by the protestant).
12. Protest letter received from protestant on June 7 at 1:07 PM

Response to Allegations

Opening Paragraph

Allegation (a): "...the FOIA request to date have (sic) not been answered as promised" (p.1).

Response: Protestant was told on the phone the request would be fulfilled within three working days. The documents were requested via email on Friday, June 3rd at 1:48 PM. The documents were emailed to protestant on Tuesday, June 7 at 3:56 PM.

Allegation (b): "...because of the following reasons that could not have been raised pursuant 11-35-1410(1)(a)" (p.2)

Response; 11-35-1410 concerns definitions; however, Section 1410(1)(a) does not exist in the current Consolidated Procurement Code so I am unsure what the protest is pursuant to.

Protested Issues

1. Protestant claims that the clerical error on the Intent to Award (contract #4400003807) that lists the contract term as 07/01/2010 through 12/31/9999¹ is in violation of 11-35-1520 (2) and 11-35-2034 (4). The reference to 1520(2) is not relevant. The error was on the intent to award, not the RFP that included "specifications and all contractual terms and conditions applicable to the procurement." Protestant also claims that permission was not sought to award a multi-term contract (it was not, the state had no intention of awarding a 7,988 year contract).

The protestant claims that 1520 (5) was violated because the bid was not opened publically. As evidence, he offers the statement that he requested the location of the bid opening several times (protestant does not state from whom he requested the information, it was not from the procurement manager). The information was clearly stated in the RFP and Amendment 1 that extended the opening date to 5/17/2011.

The protestant claims that after driving to Columbia and visiting 1201 Main St., 6th Floor, on 6/23/2011 and 6/31/2011 he was denied a public bid opening. Assuming protestant means 5/23/2011 and 5/31/2011, I am uncertain why he would demand a public opening as these are proposed award dates (as amended by Extension of award 1 and 2). The bid opening was performed on 5/17/2011 at the time and place designated in Amendment 1.

¹ The error was corrected by posting a corrected Intent to Award as soon as the error was brought to my attention by Russell Brown of First Steps

The protestant claims on pg. 2 and 3 that Singletary's Tax Services bid was "the lowest responsible best value bidder (the solicitation was an RFP but even if it was a Best value Bid, the lowest price would not necessarily win the bid)." The protestant's next line states that "contrary to the RFP the award was given to another bidder. Nowhere in the RFP does it state the award will be made to the lowest bidder (if it had, the solicitation would not be an RFP as stated by the protestant but an Invitation to Bid.)"

The next matter raised by the protestant was that in the original award, both awardees were awarded Region II. The intent to award clearly states that Cherry Bekaert & Holland LLP were awarded Region I and Elliot Davis Region II; it was only by clicking on the contract number link that takes one to the vendor search/contracts screen that the error could be seen. This was an administrative error and was corrected. The protestant cites 11-35-1520(7) to support his claim; however, no Correction or Withdrawal of Bids took place nor was either award cancelled. Both the Determination and Findings in the procurement file and the Intent to Award clearly show who was to be awarded which region.² Protestant also states his company was not named (presumably on the award statement). This is indeed the case because the protestant's company did not win an award (in fact, for Region I, Singletary Tax Services placed 9th out of 9 offers and in Region II, the company placed 7th out of 9 offers.)

2. Other than a citation to Section 11-35-1520(7) Correction or Withdrawal of Bids, the protestant only alleges that, "Without doubt the changes were prejudicial to the interest of the State and fair competition and they must not be permitted by state law." Since no detail regarding the alleged "changes" were provided by the protestant, the State cannot respond to the allegation.
3. Protestant cites 11-35-1520 (10) "Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the Invitation for Bids must be given..." (p.4). The solicitation was issued as an RFP under Section 11-35-1530, not an IFB under 11-35-1520 rendering the above irrelevant. The notice of Intent to Award was posted at the location posted in the RFP.

² It should be noted that the protestant also claims in this section that the procurement officer "failed to return several calls from Singletary's Tax Services" and while this issue is probably not protestable, I feel it should be addressed. Mr. Singletary left one message for the procurement officer on June 1 and the message was returned on June 2 before 10:00 AM. If Mr. Singletary called my office when I was away from my desk and did not leave a message, I cannot be held responsible for not returning his calls.

4. Protestant cites 11-35-1520(11), which refers to Requests for Qualifications (not RFPs). This solicitation did not involve a Request for Qualifications under either 11-35-1520 or 11-35-1530. The protestant also claims that he was denied his right to public inspection under 11-35-1520(5), a claim that is clearly erroneous because I emailed him the information requested on June 7 (and as of close of business on Friday 10, the email had yet to be opened by the protestant.)
5. The protestant cites 11-35-2420 and reports anticompetitive practices among “bidders, offerors, and brings it to the attention of each protest reading state employee, and request that immediate notice for all relevant facts shall be transmitted to the Attorney General by the Chief Procurement Officer (CPO)”. At the time this request was made, the protestant had not seen any documents related to the selection process and in fact, had only seen the posted RFP document, amendments, extensions of award and intent to award documents. The protestant has provided no evidence that anticompetitive practices have taken place.
6. Protestant claims he did not submit his protest for several days because he was waiting for information promised to him within 2 to 3 days by the procurement manager. The information was promised within 2 to 3 working days and the protestant was told (via email) he would receive the information by Tuesday afternoon (June 7, 2011.) The protestant received the information by the date promised and the point is moot because his protest appears to be timely.
7. Protestant lists seven (7) Federal Antitrust laws that he believes have been “grossly violated” (items 7 through 13). Even if provided with details of what alleged violations occurred, I do not know if these alleged violations are within the jurisdiction of either the Chief Procurement Officer or Procurement Review Panel.

The remainder of the letter deals with the protestant’s request for a hearing before the procurement review board (Procurement Review Panel), damages requested (if I am reading this part correctly, the protestant appears to be asking for approximately \$20 million and a re-bid), plus various unsubstantiated accusations of bid rigging and bid tampering prior to evaluation. Finally the protestant has requested that MMO issue a “Litigation Hold Notice” to be sent to “all employees, departments, IT Departments heads and bidders who submitted.” Although I’m uncertain whether such a notice can be addressed under this administrative process, I did contact First Steps and ask Russell Brown to ensure that the panel members do not dispose of any notes they may have. Since I was not provided any notes by the panel members at the end of the evaluation process, do not form a part of the procurement file nor do I know if any exist.

Links to the solicitation and award documents may be found at
[http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400002768.](http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400002768)



June 20, 2011

R. Voight Shealy, CPM
Chief Procurement Officer for Supplies and Services
Materials Management Office
1201 Main St., Suite 600
Columbia, SC 29201

Re: Protest of John Singletary – Solicitation 5400002768

Dear Mr. Shealy,

As I mentioned in my email to you dated June 16, 2011, due to an error in the email address noted for Elliott Davis, our firm became aware of Mr. Singletary's protest *after* the June 14th response deadline noted in your email of June 9th and therefore requested an extension of time to respond. Please allow this correspondence to serve as our response to the Protestant's claims.

Protestant has alleged, among other things, anticompetitive practices among bidders as well as several improprieties in the bid process.

Response: To the best of its knowledge and belief, Elliott Davis, LLC followed the bid process as outlined and per instructions it received from the State Procurement Office as part of the RFP process. Elliott Davis, LLC has no knowledge of any improprieties and strictly denies that it engaged in any illegal, improper, fraudulent, or anticompetitive practices or bid rigging or similar actions in this matter.

Respectfully submitted,

ELLIOTT DAVIS, LLC

A handwritten signature in black ink, appearing to read "Laurie V. Smith".

Laurie V. Smith, CPA

Skinner, Gail

From: John Singletary [JOHN@SINGLELETARYPHOTOGRAPHY.COM]
Sent: Tuesday, June 28, 2011 3:22 PM
To: Stevens, John
Cc: lsmith@elliottdavis.com; arobinson@cbh.com; DCovey@dew.sc.gov Covey; Stevens, John; Crum, Molly; Skinner, Gail; Singleton, Delbert; Shealy, Voight; carlasing@knology.net; Eddie Dutton; John Singletary; Russell Brown
Subject: Re: protest solicitation 540002768 intent to award same doc is attached to end do e-mail
Importance: High
Attachments: Score Sheets 5400002768 (bid rigging).pdf; ATT00001.htm; Solicitat. #5400002624 Score Sheets correct.pdf; ATT00002.htm; amen complaint from pacer.pdf; ATT00003.htm

Dear Mr. Stevens,

I did receive correspondence from Mr. Dutton with CB&H. I have not received any further communication regarding the settlement proposal i forwarded at you request. I am attaching a copy of the evaluation forms so that everyone can be on the sam page concerning the flagrant violations of the procurement process. The Procurement Officer clearly has violated numerous SC Procurement Law relating to the process used in this solicitation. Many changes were made the day after the evaluators signed the sheets; some sheets give no indication of the evaluator, the offeror, the date, nor the evaluators number, numbers are crossed over, whited out, total changed, the dates for evaluation meeting do not coincide with the evaluation sheets, simply put it is just a mess. There is no way one could conceive that a fair evaluation took place given the more that 150 violations that have occurred between the The South Carolin Consolidate procurement Code Title 11 Chapter 35 and the South Carolina Code of Regulations Chapter 19. Many companies do not realize that seemingly-commonplace decisions made on a daily basis could have antitrust implications: whether to set up a competing distributor or terminate an existing one, whether to join a trade association of competitors (chamber of commerce only the two bid winners were members) and whether to set resale prices. Caution should be considered in order to proceed with full knowledge of any potential legal exposure and minimize the risk of adverse consequences from any affected parties, which could include company, competitors and customers. Again I am attaching a copy of two solicitation evaluations for everyone to consider as it is evidence that needs to be shared. The comparison of a properly conducted and a poorly conducted bid evaluation is clear.

solicitation 540002768the one in question